STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

v **File No. 122607-001**

Blue Cross Blue Shield of Michigan

Respondent

Issued and entered
this __19th___ day of December 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On July 29, 2011, XXXXX, authorized representative of XXXXX (Petitioner), filed a request with the Commissioner of Financial and Insurance Regulation for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. After a preliminary review of the material submitted, the request was accepted on August 5, 2011.

The Petitioner has health care coverage through Blue Cross and Blue Shield of Michigan (BCBSM). His benefits are contained in BCBSM's *Flexible Blue Individual Market Certificate* (the certificate).

Because medical issues are involved, the case was assigned to an independent review organization which provided its analysis and recommendation on August 19, 2011. (A copy of the complete report is being provided to the parties with this Order.)

II. FACTUAL BACKGROUND

The Petitioner has a history of cardiac problems. His physician prescribed the use of a device to detect atrial fibrillation. The device used was a mobile cardiac outpatient telemetry monitor (MCOT) which was used from March 11, 2011 to April 3, 2011. The provider of the device, XXXXX, charges for the device itself and for its services in processing the data captured by the device.

BCBSM denied coverage stating the MCOT was investigational. The Petitioner appealed the denial through BCBSM's internal grievance process. After a managerial-level conference on May 12, 2011, BCBSM did not change its decision and issued a final adverse determination dated June 3, 2011. The amount at issue in this appeal is $4,500.00.

III. ISSUE

Did BCBSM properly deny coverage for the Petitioner's MCOT?

IV. ANALYSIS

BCBSM's Argument

In its final adverse determination, BCBSM wrote:

> . . . The BCBSM/BCN Joint Uniform Medical Policy Committee (JUMP) has determined that the service is investigational. As a result, you remain liable for the charge of $4,500.00 to XXXXX.
>
> The JUMP Committee is comprised of physicians and nurses who perform new technology assessment through the review of the world's medical literature. This review also includes consultation with practicing specialty physicians, specialty physician organizations and other providers, as appropriate. After consideration of the medical literature and the input of providers, a medical status is determined; this includes the designation of new technologies as investigational or established.
>
> As investigational status means that the safety and effectiveness of a particular technology has not been definitively determined. An established technology means that the safety and effectiveness have been definitively determined. . . .
>
> As explained in the *Flexible Blue Individual Market Certificate, Section 7: General Conditions of Your Contract,* we do not pay for experimental treatment (including experimental devices).
>
> To clarify, our medical consultants reviewed the documentation sent by Mr. Ehrlichman and determined that there is no convincing long term advantageous outcome over the use of conventional monitoring. Therefore, payment cannot be approved.

Petitioner's Argument

In his request for external review, the Petitioner's representative wrote:

> . . . Contrary to the finding in the Plan Denial Letter, and the denial of the first appeal the Services are well-established as clinically effective. . . . This conclusion is supported by the clinical determinations of the Ordering Physician,

> the standards of care in the medical community, studies in peer-reviewed and other medical literature, the terms of the Patient's Plan coverage and applicable law.
>
> . . . This technology was approved by the FDA in November 1998 and is covered by the Level 1 CPT codes 93229 for the technical component and 93228 for the professional component. Mobile cardiovascular telemetry services for the indication involved in this case have now been used effectively by the medical community in the United States for over a decade, and the health plans that cover this clinically valuable service for this indication include, among others, Medicare (which covered this service since May 2001, and nationally prices the technical and professional components), Tricare, Highmark BC/BS, Independence BC/BS, Wellmark BCBS, Aetna, Cigna, and Humana.

Commissioner's Review

The question of whether the Petitioner's MCOT was experimental for treatment of his condition was presented to an independent medical review organization (IRO) for analysis, as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer is a physician certified by the American Board of Internal Medicine with a subspecialty in cardiovascular disease. The reviewer is published in peer reviewed medical literature and is in active practice. The reviewer's report included the following analysis and recommendation:

> In reviewing the medical literature, the reviewer has been able to identify studies that have examined the utility of Mobile Cardiac Outpatient Telemetry. There does appear to be evidence to suggest that MCOT is more efficacious than standard loop monitors in detecting symptomatic and asymptomatic arrhythmias.
>
> This is the case of a fifty three (53) year old male enrollee with a history of atrial fibrillation. The enrollee is [status post] ablation with two (2) separate procedures in 2010. Ablation procedures are not 100% effective, and it is of clinical importance to know if the enrollee is having asymptomatic recurrences. This is to say that detection of atrial fibrillation during the follow-up period affects the patient's management. First of all, recurrent atrial fibrillation may affect the anticoagulation regimen. Furthermore, the enrollee may be a candidate for antiarrhythmic therapy if he is in fact having a recurrence.
>
> There is evidence in the clinical literature to support the notion that Mobile Cardiac Outpatient Telemetry monitoring is more likely to capture and document symptomatic and asymptomatic arrhythmias.
>
> [References omitted.]
>
> In view of the current data demonstrating that MCOT is more efficacious than standard loop monitors in detecting both symptomatic and asymptomatic

arrhythmias, the use of this technology would not be considered experimental/ investigational.

Recommendation:

It is the recommendation of this reviewer that the denial of coverage issued by Blue Cross Blue Shield of Michigan for CPT code 93229, Mobile Cardiovascular Telemetry, be overturned.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO's recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the IRO recommendation and finds that MCOT is not experimental for treatment of Petitioner's condition.

V. ORDER

Respondent Blue Cross Blue Shield of Michigan's June 3, 2011, final adverse determination is reversed. BCBSM shall provide coverage for the Petitioner's 2010 mobile cardiac outpatient telemetry monitoring within 60 days from the date of this Order and shall, within seven (7) days of providing coverage, furnish the Commissioner with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free at (877) 999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton
Commissioner